

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**IN RE DIGITEK®**

**PRODUCTS LIABILITY LITIGATION**

**MDL NO. 1968**

**THIS DOCUMENT RELATES TO ALL CASES**

**MOTION TO EXTEND DEADLINES IN PTO # 16**

Plaintiffs hereby move this Court for an Order staying the deadlines contained in PTO # 16 for class certification motions and briefing, expert disclosures and reports, and deposition deadlines. In support of their motion, Plaintiffs state as follows:

1. PTO # 16 provides deadlines for the filing of class certification motions and briefs for other putative classes, expert disclosures and reports and completing depositions of Defendants' employees. The deadlines negotiated by Plaintiffs' counsel were based upon an understanding that Defendants would cooperate in discovery and would quickly produce all documents relevant to this case.

2. As of the date of this filing, the Actavis defendants have produced a mere 65,000 pages of documents, consisting mostly of batch records for all of the Digitek batches that were recalled. Excluding documents produced in accordance with PTO # 16, Plaintiffs have not received a single document from the Actavis defendants that is responsive to any of the Requests for Production propounded by the Plaintiffs pursuant to Rule 34 of the Federal Rules of Civil Procedure. Such documents would include internal investigatory documents, correspondence, memorandums, emails, and relevant individual's custodial files.

3. The Actavis defendants have informally indicated that a complete production of documents will not occur for another two (2) to three (3) months. By this time, Defendants will

have deposed all of the Plaintiffs' witnesses in the trial group cases while the Plaintiffs will not even have all of the Defendants' documents.

4. Plaintiffs' motion to compel is presently pending before this Court.

5. Without having a full and complete production of documents from all defendants, Plaintiffs are unable to adequately brief class certification issues, have the case reviewed by expert witnesses, or take meaningful depositions of Actavis employees.

6. The Defendants' have preliminarily agreed upon a two (2) week extension for the Plaintiffs to submit a class certification motion brief, that Plaintiffs requested in August anticipating full document production by September 1, 2009.

7. Plaintiffs patiently awaited Defendants' document production in accordance with the September 1, 2009 deadline.

8. In light of Defendants failure to timely produce documents, Plaintiffs seek an order extending the class certification briefing, expert reports, and deposition deadlines until 30 to 45 days after the final production of documents from the Defendants. Such an order is required under the circumstances to allow the Plaintiffs time to adequately prepare their case.

WHEREFORE, the Plaintiffs respectfully request that this Honorable Court enter an order extending the class certification briefing, expert reports, and company deposition deadlines until 30 to 45 days after the final production of documents from the Defendants.

Dated: September 24, 2009

Respectfully submitted,

On Behalf of the Plaintiffs' Steering Committee

s/Fred Thompson, III Esq. \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 24, 2009, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

s/Fred Thompson, III Esq. \_\_\_\_\_  
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